

Court Voids Wiretap Data On Hundreds

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The Supreme Court ruled unanimously yesterday that evidence against several hundred defendants cannot be used because of the way former Attorney General John N. Mitchell administered the 1968 federal wiretapping law.

Mitchell's failure to approve dozens of wiretap requests personally or to designate a high-ranking Justice Department official for the task, was a serious violation of the legal rights safeguarded by the law, the high court held.

The decision brushed aside government arguments that the defective procedures were mere technicalities.

The 9-to-0 ruling upheld the dismissal of a narcotics indictment against Dominic N. Giordano of Baltimore, and it is expected to have the same result in at least 60 cases involving 626 defendants.

In a companion case involving a somewhat different Justice Department procedure, a 5-to-4 majority said it did not "condone" Mitchell's practices but declared their defects were more of a bookkeeping nature. This ruling kept alive prosecutions in 99 cases involving 807 defendants.

Even in declining to suppress evidence in the 99 cases, however, the court said it is "appropriate to suggest that strict adherence by the government to the provisions of [the 1968 law] would nonetheless be more in keeping with the responsibilities Congress has imposed upon it when authority to engage in wiretapping or electronic surveillance is sought."

The two decisions were expected to bring further embarrassment to the Nixon administration, which suffered numerous similar reversals in lower courts on the same issues.

Both during and after the

1968 campaign, Mr. Nixon and Mitchell frequently criticized former Attorney General Ramsey Clark for failing to use the court-ordered wiretap authority Congress provided over Clark's protest. Mr. Nixon and Mitchell pledged a vigorous wiretapping program that would bring drug peddlers, gamblers and organized crime figures to justice.

The wiretap law provides for criminal and civil penal-

See WIRETAPS, A12, Col. 3

High court trims protection of law in repossession cases. Page A12.

Justices Curtail Wiretap Evidence

WIRETAPS, From A1

ties for violations. But the court noted that the criminal sanctions apply only to the use of a wiretap order knowing that it was unlawful—a hard charge to prove.

Nor are courts expected to award civil damages to the wiretap targets, most of whom were charged with serious crimes.

Yesterday's ruling enforced a section of the controversial wiretap law that was little noticed in the debates that preceded its passage. It called for suppression of evidence obtained during an "unlawful" wiretap and spelled out procedures for seeking a lawful tap order.

The law said that a judge must be satisfied that there was probable cause to suspect that a specific telephone tap would help solve a crime. It also provided that requests for such orders at the federal level must be approved by the Attorney General or a specially designated assistant attorney general.

Justice Byron R. White, writing for the unanimous court, traced the history of the provision and found that it was not a formality. It was designed, he said, "to make doubly sure that the statutory authority be used with restraint," adding an executive branch check to the judicial safeguard.

"The mature judgment of a particular, responsible Department of Justice official is interposed as a critical precondition to any judicial order," White said.

White, a deputy attorney general under the late Attorney General Robert F. Kennedy, said Justice Department supporters of wiretap laws began asking Congress in 1961 to impose this special safeguard in any wiretap law that might pass. Congress agreed that the authorizing official should be

one who was "responsive to the political process" and not merely a staff prosecutor.

Rather than designate a specific assistant attorney general as his alternate, Mitchell delegated to his executive assistant the power to approve wiretap requests from the criminal division in accordance with the aide's understanding of Mitchell's policies.

This "alter ego" theory was specifically rejected by the court as violating the law.

The 5-to-4 decision preserving the prosecutions against 807 defendants was based on affidavits filed by Mitchell that in those cases he did authorize the wiretap requests in person.

The wiretap warrants incorrectly identified former Assistant Attorney General Will Wilson as the requesting official, the court said.

Dissenting Justices William O. Douglas, William J. Brennan Jr., Potter Stewart and Thurgood Marshall argued that the court should not accept at face value Mitchell's version of how these orders were handled. They said Mitchell's version was offered belatedly and was not borne out by the Justice Department's own documentation.